

**SENATE, No. 1304**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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INTRODUCED FEBRUARY 21, 2008

**Sponsored by:**

**Senator JOHN A. GIRGENTI**

**District 35 (Bergen and Passaic)**

**Senator SHIRLEY K. TURNER**

**District 15 (Mercer)**

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**District 29 (Essex and Union)**

**Assemblyman RUBEN J. RAMOS, JR.**

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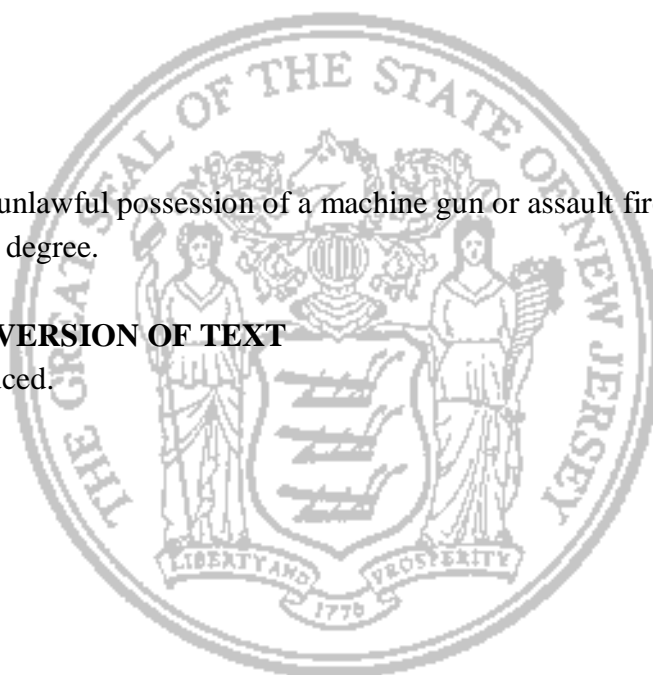
**Senators Gordon, Stack, Assemblywomen Wagner and Greenstein**

**SYNOPSIS**

Upgrades unlawful possession of a machine gun or assault firearm to a crime of the second degree.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/16/2008)**

1 AN ACT concerning machine guns and assault firearms and  
2 amending N.J.S.2C:39-5.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. N.J.S.2C:39-5 is amended to read as follows:

8 2C:39-5. a. Machine guns. Any person who knowingly has in  
9 his possession a machine gun or any instrument or device adaptable  
10 for use as a machine gun, without being licensed to do so as  
11 provided in N.J.S.2C:58-5, is guilty of a crime of the **[third]** second  
12 degree.

13 b. Handguns. Any person who knowingly has in his possession  
14 any handgun, including any antique handgun, without first having  
15 obtained a permit to carry the same as provided in N.J.S.2C:58-4, is  
16 guilty of a crime of the third degree if the handgun is in the nature  
17 of an air gun, spring gun or pistol or other weapon of a similar  
18 nature in which the propelling force is a spring, elastic band, carbon  
19 dioxide, compressed or other gas or vapor, air or compressed air, or  
20 is ignited by compressed air, and ejecting a bullet or missile smaller  
21 than three-eighths of an inch in diameter, with sufficient force to  
22 injure a person. Otherwise it is a crime of the second degree.

23 c. Rifles and shotguns. (1) Any person who knowingly has in  
24 his possession any rifle or shotgun without having first obtained a  
25 firearms purchaser identification card in accordance with the  
26 provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

27 (2) Unless otherwise permitted by law, any person who  
28 knowingly has in his possession any loaded rifle or shotgun is  
29 guilty of a crime of the third degree.

30 d. Other weapons. Any person who knowingly has in his  
31 possession any other weapon under circumstances not manifestly  
32 appropriate for such lawful uses as it may have is guilty of a crime  
33 of the fourth degree.

34 e. Firearms or other weapons in educational institutions.

35 (1) Any person who knowingly has in his possession any  
36 firearm in or upon any part of the buildings or grounds of any  
37 school, college, university or other educational institution, without  
38 the written authorization of the governing officer of the institution,  
39 is guilty of a crime of the third degree, irrespective of whether he  
40 possesses a valid permit to carry the firearm or a valid firearms  
41 purchaser identification card.

42 (2) Any person who knowingly possesses any weapon  
43 enumerated in paragraphs (3) and (4) of subsection r. of  
44 N.J.S.2C:39-1 or any components which can readily be assembled  
45 into a firearm or other weapon enumerated in subsection r. of

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 N.J.S.2C:39-1 or any other weapon under circumstances not  
2 manifestly appropriate for such lawful use as it may have, while in  
3 or upon any part of the buildings or grounds of any school, college,  
4 university or other educational institution without the written  
5 authorization of the governing officer of the institution is guilty of a  
6 crime of the fourth degree.

7 (3) Any person who knowingly has in his possession any  
8 imitation firearm in or upon any part of the buildings or grounds of  
9 any school, college, university or other educational institution,  
10 without the written authorization of the governing officer of the  
11 institution, or while on any school bus is a disorderly person,  
12 irrespective of whether he possesses a valid permit to carry a  
13 firearm or a valid firearms purchaser identification card.

14 f. Assault firearms. Any person who knowingly has in his  
15 possession an assault firearm is guilty of a crime of the **[third]**  
16 second degree except if the assault firearm is licensed pursuant to  
17 N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c.32  
18 (C.2C:58-12); or rendered inoperable pursuant to section 12 of  
19 P.L.1990, c.32 (C.2C:58-13).

20 g. (1) The temporary possession of a handgun, rifle or shotgun  
21 by a person receiving, possessing, carrying or using the handgun,  
22 rifle, or shotgun under the provisions of section 1 of P.L.1992, c.74  
23 (C.2C:58-3.1) shall not be considered unlawful possession under  
24 the provisions of subsection b. or c. of this section.

25 (2) The temporary possession of a firearm by a person receiving,  
26 possessing, carrying or using the firearm under the provisions of  
27 section 1 of P.L.1997, c.375 (C.2C:58-3.2) shall not be considered  
28 unlawful possession under the provisions of this section.

29 h. A person who is convicted of a crime under subsection a., b.  
30 or f. of this section shall be ineligible for participation in any  
31 program of intensive supervision; provided, however, that this  
32 provision shall not apply to a crime under subsection b. involving  
33 only a handgun which is in the nature of an air gun, spring gun or  
34 pistol or other weapon of a similar nature in which the propelling  
35 force is a spring, elastic band, carbon dioxide, compressed or other  
36 gas or vapor, air or compressed air, or is ignited by compressed air,  
37 and ejecting a bullet or missile smaller than three-eighths of an inch  
38 in diameter, with sufficient force to injure a person.

39 i. A person convicted of violating subsection a., b. or f. of this  
40 section shall be sentenced by the court to a term of imprisonment,  
41 which shall include the imposition of a minimum term during which  
42 the defendant shall be ineligible for parole, if the court finds that  
43 the aggravating circumstance set forth in paragraph (5) of  
44 subsection a. of N.J.S.2C:44-1 applies. The minimum term of  
45 parole ineligibility shall be fixed at five years. The sentencing  
46 court shall make a finding on the record as to whether the  
47 aggravating circumstance set forth in paragraph (5) of subsection a.  
48 of N.J.S.2C:44-1 applies, and the court shall presume that there is a

1 substantial likelihood that the defendant is involved in organized  
2 criminal activity if there is a substantial likelihood that the  
3 defendant is a member of an organization or group that engages in  
4 criminal activity. The prosecution at the sentencing hearing shall  
5 have the initial burden of producing evidence or information  
6 concerning the defendant's membership in such an organization or  
7 group.

8 (cf: P.L.2007, c.284, s.1)

9  
10 2. This act shall take effect immediately.

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12  
13 **STATEMENT**

14  
15 Under current law, any person who knowingly possesses a  
16 machine gun without being licensed to do so is guilty of a crime of  
17 the third degree. A crime of the third degree is punishable by three  
18 to five years imprisonment, a fine of up to \$15,000, or both. Under  
19 the provisions of this bill, the person would be guilty of a crime of  
20 the second degree. A crime of the second degree is punishable by  
21 five to 10 years imprisonment, a fine of up to \$150,000, or both.

22 Similarly, under current law a person who knowingly possesses  
23 an assault firearm that is not licensed, registered or rendered  
24 inoperable is guilty of a crime of the third degree. Under the  
25 provisions of this bill, the person would be guilty of a crime of the  
26 second degree.